

No. 26.

IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT.

FRANCISCA L. DE MARTIN, *Appellant*, }
v. }
JAMES PHELAN, *Appellee*. }

TRANSCRIPT OF THE RECORD,
UPON APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF CALIFORNIA.

GEORGE D. COLLINS,
Attorney for Appellant.

FRANK J. SULLIVAN, AND
W. F. HERRIN,
Attorneys for Appellee.

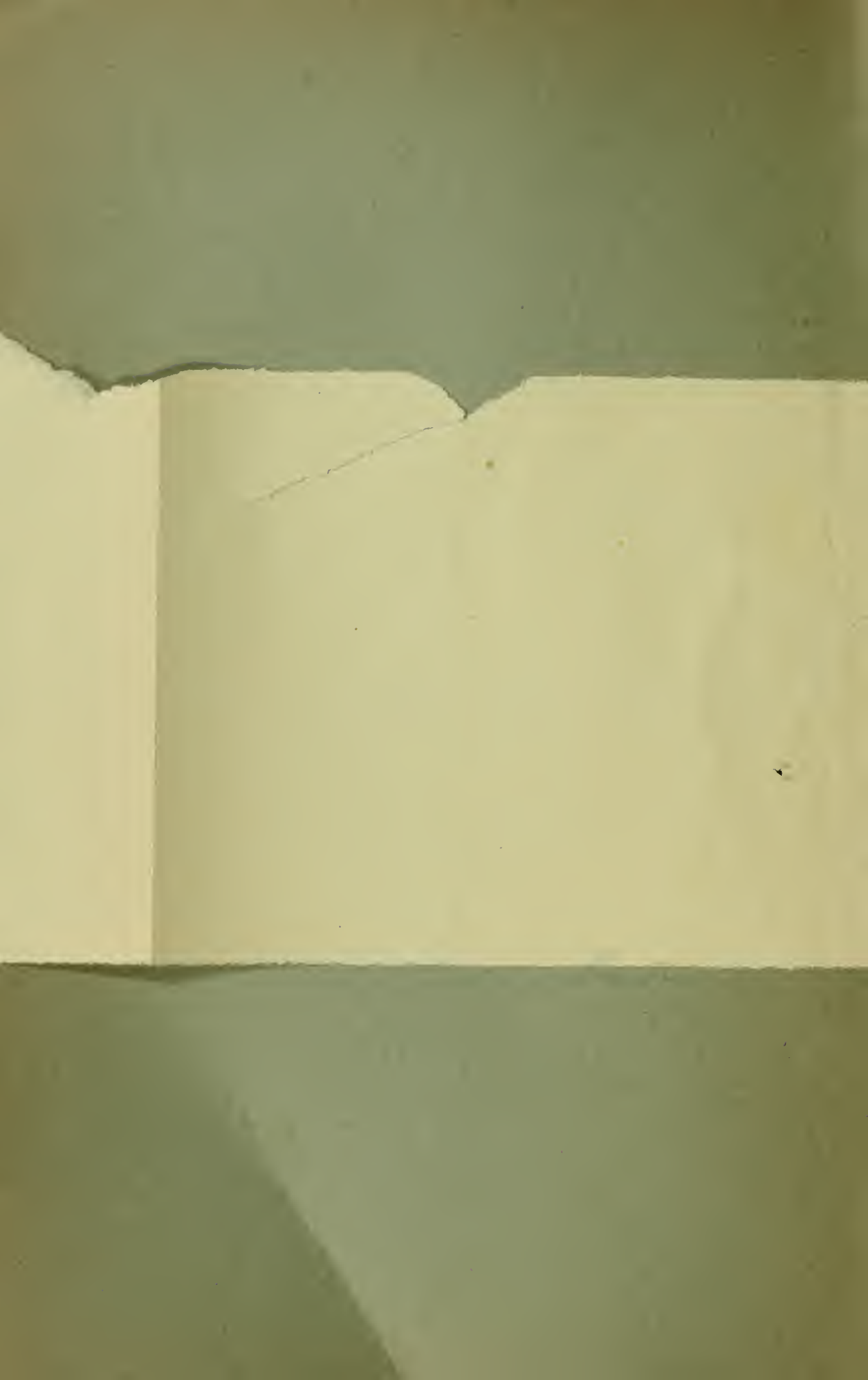
Filed February....., 1892.

.....
Clerk.

FILED
FEB 26 1892

Records of current
court of appeals

4



INDEX.

	Page of Original Record.	Page of Printed Record.
Appeal and allowance thereof.....	20	20
Assignment of Errors.....	19	19
Bill in Equity.....	1	3
Bond on Appeal.....	22	23
Certificate to Enrollment.....	18	19
Decree.....	16	18
Demurrer.....	11	13
Enrollment.....	15	17
Order sustaining Demurrer.....	14	16
Order allowing Appeal and fixing Bond....	21	22
Subpœna <i>ad respondendum</i>	9	11

IN THE
CIRCUIT COURT
 OF THE
 UNITED STATES,
 NINTH JUDICIAL CIRCUIT,
 NORTHERN DISTRICT OF CALIFORNIA.

FRANCISCA LEYBA DE MARTIN,

Complainant,

v.

JAMES PHELAN,

Defendant.

TRANSCRIPT OF RECORD.

BILL IN EQUITY.

*To the Judges of the Circuit Court of the United States
 for the Northern District of California :*

Francisca Leyba de Martin, of San Francisco, in the State of California, and a citizen of Mexico, brings this,

her bill, against James Phelan, of San Francisco, in the State of California, and a citizen of the State of California. And thereupon your oratrix complains and says that heretofore on the 4th day of November, 1881, she was the owner and seized in fee of all those certain pieces or parcels of land, situate, lying and being in the County of Santa Clara, in the State of California, and particularly bounded and described as follows, to wit :

Lot seven in block two, range two, north of the base line in the City of San Jose, in said County and State ; also, lot two, block one, range two, north of the base line in the City of San Jose, in said County and State ; also lots one, two, three and four in block one of range seven, north of the base line in said City of San Jose, County and State aforesaid ; also, that other tract or parcel of land lying, situate and being in said City of San Jose, bounded and described as follows, to wit :
 Beginning on the westerly line of Second street at a point distant two hundred and seventy-five and $\frac{68}{100}$ feet southerly from the southern line of Santa Clara street ; and from said point running southerly along the aforesaid line of Second street eighty-two and $\frac{34}{100}$ feet ; thence westerly and parallel with Santa Clara street, one hundred and thirty-seven and $\frac{84}{100}$ feet ; thence northerly and parallel with Second street eighty-two and $\frac{34}{100}$ feet, thence easterly and parallel with Santa Clara street one hundred and thirty-seven and $\frac{84}{100}$ feet to the point of beginning, and being a part of lot five in block one

range two, north of the base line. Also, that other tract or parcel of land lying, situate and being in said City of San Jose, and bounded and described as follows, to wit: Beginning on the easterly line of Market street at a point distant one hundred varas northerly from the northern line of St. John street; running thence northerly along said line of Market street twenty and $\frac{5}{6}$ varas; thence easterly and parallel with St. John street fifty varas; thence southerly and parallel with Market street twenty and $\frac{5}{6}$ varas; and thence westerly fifty varas to the point of beginning, and being the south part of lot four, in block three, of range one, north of the base line. Also, those other tracts or parcels of land lying, situate and being in said City of San Jose, and known and described upon the map or plat of said City as the north half ($\frac{1}{2}$) of lot four and full lot five, in block two, of range one, north of the base line, and particularly bounded and described as being on the easterly line of Market street, at a point distant fifty varas southerly from the southern line of St. John street, and running thence southerly along the line of Market street twenty-five varas; thence easterly at right angles fifty varas; thence southerly at right angles twenty-five varas; thence easterly at right angles fifty varas; thence northerly at right angles fifty varas; and thence westerly at right angles one hundred varas to the place of beginning. Also, that other tract or parcel of land lying, situate and being in said City of San Jose, and bounded and de-

scribed as follows, to wit: Beginning at the intersection of the northerly line of Taylor street with the easterly line of First street; and running thence northerly and along the easterly line of First street seventeen hundred and seventy-four and $\frac{8}{100}$ feet to the northwestern boundary line of said City; thence easterly at right angles along said boundary line thirty-one hundred and forty-one and $\frac{12}{100}$ feet to the westerly line of Tenth street (prolonged); thence southerly at right angles along said line of Tenth street seventeen hundred and seventy-four and $\frac{8}{100}$ feet to the northerly line of Taylor street; and thence westerly along said line of Taylor street thirty-one hundred and

4 forty-one and $\frac{12}{100}$ feet to the point of beginning, and containing one hundred and twenty-eight acres of land. Also, that other tract or parcel of land lying, situate and being in said County of Santa Clara, and bounded and described as follows, to wit: Beginning at a stake in the east line of First street at its intersection with the northwest boundary line of the City of San Jose (proper); running thence along said boundary line north fifty-nine degrees and twenty minutes east forty-seven and $\frac{63}{100}$ chains to the southwestern boundary of 500-acre lot 18; thence along said boundary north to thirty-eight degrees nineteen minutes west six and $\frac{78}{100}$ chains to stake marked "No. 2," at the southeast corner of Younger's land; thence along the southeast boundary of lands of said Younger south fifty-nine degrees and twenty minutes west forty-seven and $\frac{63}{100}$

chains to a stake marked "No. 1," on the east line of First street; and thence along said line southerly six and $\frac{78}{100}$ chains to the place of beginning, and containing thirty-two and $\frac{29}{100}$ acres of land. Also, that other tract or parcel of land lying, situate and being in the City of San Jose, in said County and State, and bounded and described as follows, to wit: Beginning at the intersection of the southerly line of El Dorado street with the westerly line of First street; running thence southerly along said line of First street forty-four feet; thence westerly and parallel with El Dorado street one hundred and thirty-seven and $\frac{77}{100}$ feet; thence northerly and parallel with First street forty-four feet

5 to the southerly line of El Dorado street; and thence easterly along said line of El Dorado street one hundred and thirty-seven and $\frac{77}{100}$ feet to the point of beginning. Also, those other tracts or parcels of land lying, situate and being in said City of San Jose, in said County and State, known and described upon the map or plat of said City as lots 6 and 7, in block 2, range 1, north of the base line. Also, that other tract or parcel of land lying, situate and being in said County of Santa Clara, and State aforesaid, and bounded and described as follows, to wit: Beginning at a stake marked "No. 1," on the northwesterly boundary line of 500-acre lot No. 9, at the intersection of the east line of the Monterey road with said boundary; and running thence along said boundary north forty-nine degrees and twenty-eight minutes

east fifty-nine and $\frac{60}{100}$ chains to a stake marked "No. 2," on the west line of a road; then along said line of road south thirty-seven degrees and forty-nine minutes east forty-six and $\frac{49}{100}$ chains to a stake marked "No. 3," at the corner of land now or formerly owned by Dubois; thence along the northwest boundary of said land of Dubois south fifty degrees and five minutes west fifty-nine and $\frac{8}{100}$ chains to a stake marked "No. 4," upon the east line of Monterey road; and thence along said line of road north thirty-eight degrees and ten minutes west forty-six and $\frac{24}{100}$ chains to the place of beginning, and containing two hundred and seventy-four and four-fifths acres of land, and being part of 500-acre lot No. 9, saving and excepting therefrom four and $\frac{23}{100}$ acres now used and occupied by the Southern Pacific Railroad Company for its railroad.

That on said 4th day of November, 1881, and for some time prior thereto, said property was subject to mortgage liens, two of which were held by the Bank of San Jose, a corporation, and the other by one David Belden, aggregating the sum of one hundred and eighty-five thousand dollars; that the said mortgage liens held by the Bank of San Jose were foreclosed on the 13th day of August 1881, by judgment and decree of the Superior Court in and for the County of Santa Clara, in said State of California, but prior to said decree all of said mortgage liens were assigned and transferred to said defendant; that said defendant purchased said mortgage and indebtedness as a means

of securing the title to said property, and for no other purpose. That at the time of said purchase, to wit, the 13th day of August, 1881, your oratrix had no available means of support for herself and family, and was in indigent circumstances and in great need, and such continued to be her condition up to and including the 4th day of November, 1881; all of which said defendant well knew during all said time. That said defendant thereupon took advantage of the destitute condition of your oratrix, and by means of the said mortgage indebtedness purchased by him as aforesaid, induced your oratrix to transfer the said property to him in consideration of the sum of nineteen thousand
7 dollars, and thereupon, on the 4th day of November, 1881, your oratrix did make, execute and deliver to said defendant a deed of conveyance to said property in consideration of said sum of nineteen thousand dollars, and because of her helpless and destitute condition aforesaid, of which said defendant took advantage in securing said deed. That at the time of purchase of said mortgage indebtedness, to wit, August 13, 1881, and thence until the said 4th day of November, 1881, the interest of your oratrix in said property, to wit, the equity of redemption, was of the value of forty-five thousand five hundred dollars and more, which the said defendant during all said times knew; and in taking the interest of your oratrix in said property, and paying therefor the sum of nineteen thousand dollars, the said defendant took advantage of

his position as holder of said mortgage indebtedness, and of the helpless and poverty-stricken condition of your oratrix. Your oratrix further avers: That the rents, issues and profits of said property received by defendant since said 4th day of November, 1881, amount to the sum of one hundred thousand dollars. That your oratrix is and always has been ready and willing, and hereby offers, to pay said defendant the said sum of nineteen thousand dollars, with legal interest thereon, and also the amount of said mortgage indebtedness with interest and costs, and to redeem said property from said mortgage liens and said judgment.

8 That said defendant has been absent from said State of California for a period aggregating four years since the 4th day of November, 1881. Wherefore your oratrix prays that notwithstanding said deed executed by her to defendant, she be adjudged entitled to redeem said property; that an accounting of the rents, issues and profits received by defendant therefrom since the 4th day of November, 1881, be ordered by this Court, and your oratrix be credited therewith accordingly upon such redemption; and for such other further or different relief as may be conformable to equity and good conscience, and as the nature and circumstances of this case may require, and shall seem meet to this honorable Court.

May it please your Honors to grant unto your oratrix a writ of subpœna, to be directed to the said

James Phelan, thereby commanding him at a certain day and under a certain pain therein to be limited personally to appear before this honorable Court, and then and there, full, true, direct and perfect answers make to all and singular the premises; and further, to stand to, perform and abide such further order, direction, and decree therein as to this honorable Court shall seem meet. And your oratrix shall ever pray.

GEORGE D. COLLINS,

Counsel and Solicitor for Complainant, Francisca
Leyba de Martin.

Endorsed: Filed, September 16, 1890.

L. S. B. SAWYER, Clerk.

SUBPÆNA.

9

UNITED STATES OF AMERICA.

*Circuit Court of the United States, Ninth Judicial Circuit,
Northern District of California.*

In Equity.

The President of the United States of America—
Greeting to James Phelan:

You are hereby commanded that you be and appear in said Circuit Court of the United States aforesaid, at the Court-room in San Francisco, on the third day of November, A. D. 1890, to answer a Bill of Complaint exhibited against you in said Court by Fran-

cisca Leyba de Martin, who is a citizen of Mexico, and to do and receive what the said Court shall have considered in that behalf. And this you are not to omit, under the penalty of five thousand dollars. Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 16th day of September, in the year of our Lord one thousand eight hundred and ninety, and of our Independence the 115th.

[SEAL.]

L. S. B. SAWYER,
Clerk.

*Memorandum pursuant to Rule 12, Supreme Court,
U. S.*

You are hereby required to enter your appearance in the above suit, on or before the first Monday of November next, at the clerk's office of said Court, pursuant to said bill; otherwise the said bill will be taken *pro confesso*.

L. S. B. SAWYER,
Clerk.

Endorsed:

UNITED STATES MARSHAL'S OFFICE, }
Northern District of California. }

I hereby certify that I received the within writ on the 16th day of September, 1890, and personally served the same on the 15th day of October, 1890, on James Phelan, by delivering to and leaving with James Phelan, said defendant named herein, personally, at the City

and County of San Francisco, in said District, and attested copy thereof.

[SEAL.]

W. G. LONG, U. S. Marshal.

By James R. Deane, Deputy.

San Francisco, October 15, 1890.

Filed, October 15, 1890.

L. S. B. SAWYER, Clerk,

By F. D. Monckton, Deputy Clerk.

11 *In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.*

Francisca Leyba de Martin,	}	No. 10,884.
Complainant,		
<i>v.</i>	}	In Equity.
James Phelan, Defendant.		

Demurrer to Bill.

The demurrer of the above named defendant, James Phelan, to the Bill of Complaint of the above named plaintiff: This defendant by protestation, not confessing or acknowledging all or any of the matters or things in the said Bill of Complaint contained to be true in such manner and form as the same are herein set forth and alleged, doth demur to the said Bill, and for cause of demurrer showeth:

1. That it appeareth by the plaintiff's own showing that he is not entitled to the relief prayed by the

Bill, or to any relief in equity against this defendant.

2. That the said Bill does not state that the deed of conveyance therein described was intended by the parties thereto, or either of them, as security for money loaned, or for any indebtedness of plaintiff to defendant.

3. That the said Bill does not state or show that this defendant took any unfair or grossly oppressive advantage of plaintiff's necessities, or exercised any undue influence over said plaintiff, or that the consent of plaintiff would not have been given to the said conveyance had such cause not existed; or that plaintiff
12 has ever notified this defendant of her intention to rescind said conveyance, or has ever offered this defendant before the bringing of this suit to restore everything of value received from defendant by plaintiff in consideration of said conveyance; or that plaintiff exercised reasonable diligence to rescind the said conveyance promptly upon discovering the facts entitling her to rescind the said conveyance.

4. That the Bill shows on its face that plaintiff has been guilty of laches, and that her right to relief is and ought to be barred in equity by the provisions of Section 343 of the Code of Civil Procedure of the State of California.

Wherefore, and for divers other good causes of demurrer appearing on said Bill, this defendant doth demur thereto, and he prays the judgment of this Honorable Court whether he shall be compelled to make any answer to the said Bill; and he humbly prays

to be hence dismissed with his reasonable costs in this behalf expended.

FRANK J. SULLIVAN,
WM. F. HERRIN,
Solicitors for Defendant.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

WM. F. HERRIN,
Of Counsel for Defendant James Phelan.

13 STATE OF CALIFORNIA, }
City and County of San Francisco. } ss.

James Phelan being duly sworn, deposes and says that he is the defendant above named, and that the foregoing demurrer is not interposed for delay.

JAMES PHELAN.

Subscribed and sworn to before me this 24th day of November, 1890.

[SEAL.]

R. D. McELROY,
Notary Public.

Endorsed: Due service of a true copy of the within demurrer, at the City and County of San Francisco, this first day of December, A. D. 1890, is hereby admitted.

GEO. D. COLLINS,
Solicitor for Complainant.

Filed December 1, 1890.

L. S. B. SAWYER,
Clerk.

Copy of Order Sustaining Demurrer.

At a stated term, to wit: The July term, A. D. 1891, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, held at the Court-room in the City and County of San Francisco, on Monday, the 14th day of September, in the year of our Lord one thousand eight hundred and ninety-one.

Present: The Honorable James H. Beatty, U. S. District Judge, District of Idaho; The Honorable Thomas P. Hawley, U. S. District Judge, District of Nevada.

Francisca Leyba de Martin	}	No. 10,884.
James Phelan.		

The demurrer to the Bill of Complaint heretofore argued and submitted to the Court for consideration, having been duly considered, and the opinion of the Court having been read, it is ordered that said demurrer be and the same hereby is sustained, with leave to complainant to amend said Bill of Complaint on or before the next rule day.

15 *In the Circuit Court of the United States, Ninth Circuit, Northern District of California.*

Francisca L. de Martin,	}	No. 10,884.
Complainant,		
<i>v.</i>	}	
James Phelan,		
Respondent.		

Enrollment.

The complainant filed her Bill of Complaint herein on the 16th day of September, 1890, which is hereto annexed.

A subpœna to appear and answer in said cause was thereupon issued, returnable on the 3d day of November, A. D. 1890, which is hereto annexed. The respondent appeared herein on the 3d day of November, 1890, by William F. Herrin and Frank J. Sullivan, Esqs., his solicitors.

On the 1st day of December, 1890, a demurrer was filed herein, which is hereto annexed.

On the 14th day of September, 1891, an order sustaining said demurrer was made and entered, a copy of which order is hereto annexed.

16 Thereafter a decree was duly signed, filed and entered, in the words and figures following, to wit: At a stated term, to wit, the July term, A. D. 1891, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, held at the Court-room in the City and County of San Francisco, on Friday, the 16th day of

October, in the year of our Lord one thousand eight hundred and ninety-one.

Present: The Honorable Thomas P. Hawley, U. S. District Judge, District of Nevada, assigned to hold and holding Circuit Court of the United States for the Northern District of California.

Francisca Leyba de Martin,	}	No. 10,884.
Complainant,		
<i>v.</i>	}	
James Phelan,		
Defendant.		

Decree.

The demurrer to the Bill of Complaint herein having been duly considered and sustained for want of equity in the bill on the 14th day of September, 1891, and the complainant having been granted until the first Monday in October, 1891, in which to file an amended bill, and the complainant having failed to file said amended bill within the time allowed therefor, or to obtain any extension of time for filing the same; now, therefore, it is ordered, adjudged and decreed that complainant's Bill of Complaint be and the same is hereby dismissed, and that the defendant James Phelan do have and recover of and from the complainant Francisca Leyba de Martin, his costs herein expended.

HAWLEY,
Judge.

Endorsed: Filed and entered October 16, 1891.

L. S. B. SAWYER,
Clerk.

18 Whereupon said pleadings, subpœna, copy of order and decree are hereto annexed, said final decree being duly signed, filed and enrolled, pursuant to the practice of said Circuit Court.

Attest, etc.,

[SEAL.]

L. S. B. SAWYER, Clerk.

By W. B. Beazley, Deputy Clerk.

Endorsed: Enrolled papers. Filed, October 16, 1891.

L. S. B. SAWYER, Clerk.

By W. B. Beazley, Deputy Clerk.

—

19 *In the Circuit Court of the United States of America,
Ninth Judicial Circuit, Northern Dis-
trict of California.*

Francisca L. de Martin, Appellant,	} On Appeal.
<i>v.</i>	
James Phelan, Respondent.	

Assignment of Errors.

Comes now Francisca L. de Martin, the appellant herein, by George D. Collins, her attorney and solicitor, and says that the said Circuit Court of the United States committed manifest error in sustaining the demurrer interposed by the defendant and respondent in the above entitled suit, and accordingly committed manifest error in rendering and entering its judgment and decree thereupon in favor of said

the above entitled suit on the 16th day of October, 1891, doth hereby appeal from the said decree and judgment, to the United States Circuit Court of Appeals for the Ninth Circuit, and she prays that this appeal be allowed, and that a transcript of the record and proceedings and papers upon which said decree and judgment was made, duly authenticated, be sent to the said United States Circuit Court of Appeals.

GEORGE D. COLLINS,
Attorney for said Appellant.

And now, to wit: on the 30th day of December, 1891, it is ordered that the foregoing appeal be allowed as prayed for; the appellant having filed her assignment of errors.

HAWLEY,
Judge.

Endorsed: Filed December 30, 1891.

L. S. B. SAWYER,
Clerk.

21 At a stated term, to wit, the November term, A. D. 1891, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, held at the Court-room in the City and County of San Francisco, on Wednesday, the 30th day of December, in the year of our Lord one thousand eight hundred and ninety-one.

Present: The Honorable Thomas P. Hawley, U. S. District Judge, District of Nevada.

Francisca Leyba de Martin	}	No. 10,884.
<i>v.</i>		
James Phelan.	}	

Order Allowing Appeal and Fixing Bond.

Upon motion of George D. Collins, Esq., counsel for complainant, it is ordered that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the final decree heretofore filed and entered herein, be and the same hereby is allowed, and that a certified transcript of the record and all proceedings herein be forthwith transmitted to the said United States Circuit Court of Appeals. It is further ordered that the bond for costs on appeal be and the same hereby is fixed at the sum of five hundred dollars.

Citation.

25

UNITED STATES OF AMERICA—SS.

The President of the United States to James Phelan,
greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, on the 25th day of January next, pursuant to an appeal filed in the Clerk's office of the Circuit Court of the United States, for the Northern District of California, wherein Fran-

cisca L. de Martin is appellant, and you are respondent, to show cause, if any there be, why the decree and judgment rendered against the said appellant as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Thomas P. Hawley, Acting Judge of the United States Circuit Court, Ninth Circuit, for the Northern District of California, this second day of January, A. D. 1892.

THOMAS P. HAWLEY,
U. S. Judge.

Endorsed: Service of the within citation, by copy thereof, on this 2nd day of January, 1892, is admitted.

WM. F. HERRIN,
Attorney for Respondent, James Phelan.

Filed January 2, 1892.

L. S. B. SAWYER,
Clerk U. S. Circuit Court, Nor. Dist. Cal.

Bond on Appeal.

Know all men by these presents: That we, Francisca L. de Martin, as principal, and Joseph Parker and C. Knickerbocker, as securities, are held and firmly bound unto James Phelan in the full and just sum of five hundred dollars, to be paid to the said James Phelan, his certain attorney, executors, admin-

istrators or assigns ; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this second day of January, in the year of our Lord one thousand eight hundred and ninety-two.

Whereas, lately at a session of the Circuit Court of the United States, for the Northern District of California, in a suit pending in said Court between Francisca L. de Martin as complainant, and James Phelan as defendant, a decree was rendered against the said Francisca L. de Martin, and the said Francisca L. de Martin having obtained from said Court the allowance of an appeal to reverse the decree in the aforesaid suit, and a citation directed to the said James Phelan citing and admonishing him to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco in the State of California.

Now, the condition of the above obligation is such that if the said Francisca L. de Martin shall prosecute said appeal to effect, and answer all damages and costs, if she fail to make her plea good, then the above obligation to be void ; else to remain in full force and
23 virtue.

[SEAL.]

FRANCISCA L. DE MARTIN.

[SEAL.]

JOSEPH PARKER.

[SEAL.]

C. KNICKERBOCKER.

Acknowledged before me the day and year first above written.
 F. D. MONCKTON,
 Commissioner U. S. Circuit Court, Northern District
 of California.

UNITED STATES OF AMERICA, }
 Northern District of California. } ss.

Joseph Parker and C. Knickerbocker being duly sworn, each for himself deposes and says that he is a freeholder in said District, and is worth the sum of five hundred dollars, exclusive of property exempt from execution, and over and above all debts and liabilities.

JOSEPH PARKER.

C. KNICKERBOCKER.

Subscribed and sworn to before me this 2d day of January, A. D. 1892.

F. D. MONCKTON,
 Commissioner of U. S. Circuit Court, Northern
 District of California.

Endorsed: Form of bond and sufficiency of securities approved.

HAWLEY,
 Judge.

Filed January 2, 1892.

L. S. B. SAWYER,
 Clerk U. S. Circuit Court, Northern District, Cal.

24 *In the Circuit Court of the United States, Ninth
Judicial Circuit, Northern District of
California.*

Francisca L. de Martin	}	No. 10,884.
<i>v.</i>		
James Phelan.		

Clerk's Certificate to Transcript.

I, L. S. B. Sawyer, Clerk of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, do hereby certify the foregoing twenty-three written pages, numbered from 1 to 23 inclusive, to be a full, true and correct copy of the record, and all proceedings in the therein entitled suit, and that the same together constitute the transcript of the record upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said Circuit Court, this 11th day of January, 1892.

[SEAL.]	L. S. B. SAWYER,
Clerk U. S. Circuit Court, Northern District of Cali- fornia.	